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5 **UNITED STATES DISTRICT COURT**

6 **DISTRICT OF NEVADA**

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8 LEE EDWARD SZYMBORSKI,

9 Plaintiff,

10 vs.

11 THE STATE OF NEVADA, et al.,

12 Defendants.

Case No. 2:22-cv-01164-JAD-VCF

ORDER

APPLICATION TO PROCEED *IN FORMA*
PAUPERIS (EFC NO. 1)

13 Pro se plaintiff Lee Edward Szymborski filed an application to proceed in forma pauperis (IFP).
14 ECF No. 1. I deny Szymborski's IFP application without prejudice.

15 **DISCUSSION**

16 Under 28 U.S.C. § 1915(a)(1), a plaintiff may bring a civil action "without prepayment of fees or
17 security thereof" if the plaintiff submits a financial affidavit that demonstrates the plaintiff "is unable to
18 pay such fees or give security therefor." The Ninth Circuit has recognized that "there is no formula set
19 forth by statute, regulation, or case law to determine when someone is poor enough to earn IFP status."
20 *Escobedo v. Applebees*, 787 F.3d 1226, 1235 (9th Cir. 2015). An applicant need not be destitute to
21 qualify for a waiver of costs and fees but he must demonstrate that because of his poverty he cannot pay
22 those costs and still provide himself with the necessities of life. *Adkins v. E.I DuPont de Nemours &*
23 *Co.*, 335 U.S. 331, 339 (1948). If the court determines that an individual's allegation of poverty is
24 untrue, "it shall dismiss the case." 28 U.S.C. § 1915(e)(2).
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1 The applicant's affidavit must state the facts regarding the individual's poverty "with some
2 particularity, definiteness and certainty." *United States v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981)
3 (citation omitted). If an individual is unable or unwilling to verify his or her poverty, district courts have
4 the discretion to make a factual inquiry into a plaintiff's financial status and to deny a request to proceed
5 in forma pauperis. See, e.g., *Marin v. Hahn*, 271 Fed.Appx. 578 (9th Cir. 2008) (finding that the district
6 court did not abuse its discretion by denying the plaintiff's request to proceed IFP because he "failed to
7 verify his poverty adequately"). "Such affidavit must include a complete statement of the plaintiff's
8 personal assets." *Harper v. San Diego City Admin. Bldg.*, No. 16cv00768 AJB (BLM), 2016 U.S. Dist.
9 LEXIS 192145, at 1 (S.D. Cal. June 9, 2016). Misrepresentation of assets is sufficient grounds in
10 themselves for denying an in forma pauperis application. *Cf. Kennedy v. Huibregtse*, 831 F.3d 441, 443-
11 44 (7th Cir. 2016) (affirming dismissal with prejudice after litigant misrepresented assets on in forma
12 pauperis application).

13
14 The District of Nevada has adopted three types of IFP applications: a "Prisoner Form" for
15 incarcerated persons and a "Short Form" (AO 240) and "Long Form" (AO 239) for non-incarcerated
16 persons. The Long Form requires more detailed information than the Short Form. The court typically
17 does not order an applicant to submit the Long Form unless the Short Form is inadequate, or it appears
18 that the plaintiff is concealing information about his income for determining whether the applicant
19 qualifies for IFP status. When an applicant is specifically ordered to submit the Long Form, the correct
20 form must be submitted, and the applicant must provide all the information requested in the Long Form
21 so that the court is able to make a fact finding regarding the applicant's financial status. See e.g. *Greco v.*
22 *NYE Cty. Dist. Jude Robert Lane*, No. 215CV01370MMDPAL, 2016 WL 7493981, at 3 (D. Nev. Nov.
23 9, 2016), report and recommendation adopted sub nom. *Greco v. Lake*, No. 215CV001370MMDPAL,
24 2016 WL 7493963 (D. Nev. Dec. 30, 2016).

1 Plaintiff Szymborski submitted the Short Form IFP application. ECF No. 2. Plaintiff states that
2 he lives in a home worth \$550,000 and that his monthly mortgage payment is \$815. *Id.* at 1-2. Plaintiff
3 acknowledges that he has significant equity in his home, but he states that he has “bad credit” and
4 “cannot refinance or get an equity loan[.]” *Id.* at 1. Plaintiff also states that he receives social security,
5 but he does not state the amount that he receives each month. *Id.* at 1 Plaintiff also states that he receives
6 “other income”, but he does not state the source of the other income or the amount.

7 Based on plaintiff’s considerable net worth and equity in his home, along with the fact that he
8 does not provide any information about how much money he gets from social security or other sources
9 to pay his bills, I cannot determine whether the applicant qualifies for IFP status. I will give plaintiff one
10 opportunity to file a complete IFP application. I order that the plaintiff must complete the Long Form
11 application. Plaintiff is required to provide comprehensive information regarding his sources of income,
12 employment history, bank accounts, assets, monthly expenses, how he pays his bills, and his years of
13 schooling, among other things. I also order plaintiff to provide additional information about his bad
14 credit, since he alleges that it prevents from having enough money to pay the filing fee.

15 I deny plaintiff’s IFP application without prejudice. I give plaintiff thirty days to file an updated
16 IFP application. Plaintiff must fully answer all applicable questions and check all applicable boxes.
17 Plaintiff may alternatively pay the filing fee in full. Since I deny plaintiff’s IFP application, I do not
18 screen his complaint now.

19
20 ACCORDINGLY,

21 I ORDER that Szymborski’s application to proceed in forma pauperis (ECF No. 1) is DENIED
22 without prejudice.

23 I FURTHER ORDER that Szymborski has until Friday, September 30, 2022, to file an updated
24 IFP application using the Long Form or pay the filing fee as specified in this order. Failure to timely
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1 comply with this Order may result in case closure or a recommendation for dismissal with prejudice.

2 **NOTICE**

3 Pursuant to Local Rules IB 3-1 and IB 3-2, a party may object to orders and reports and
4 recommendations issued by the magistrate judge. Objections must be in writing and filed with the Clerk
5 of the Court within fourteen days. LR IB 3-1, 3-2. The Supreme Court has held that the courts of appeal
6 may determine that an appeal has been waived due to the failure to file objections within the specified
7 time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985).

8 This circuit has also held that (1) failure to file objections within the specified time and (2)
9 failure to properly address and brief the objectionable issues waives the right to appeal the District
10 Court's order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d
11 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).
12 Pursuant to LR IA 3-1, the plaintiff must immediately file written notification with the court of any
13 change of address. The notification must include proof of service upon each opposing party's attorney,
14 or upon the opposing party if the party is unrepresented by counsel. Failure to comply with this rule may
15 result in dismissal of the action.
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17 IT IS SO ORDERED.

18 DATED this 31st day of August 2022.

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20 CAM FERENBACH
21 UNITED STATES MAGISTRATE JUDGE
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